

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

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IN RE:

ROCKPORT WHALE WATCH CORP.,  
DEBTOR

CHAPTER 7  
CASE NO. 03-13943-WCH

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**MEMORANDUM OF DECISION REGARDING TRUSTEE'S FINAL REPORT AND  
ACCOUNT BEFORE DISTRIBUTION, REQUEST FOR COMPENSATION AND  
REPORT ON CLAIMS/PROPOSED DISTRIBUTION AND OBJECTION THERETO**

I. Introduction

The matter before the Court is the Trustee's Final Report and Account before Distribution, Request for Compensation and Report on Claims/Proposed Distribution (the "Final Report") and the objection thereto. For the reasons set forth below, I will enter an order approving the Final Report. The following constitutes my findings of fact and conclusions of law.

II. Background

The Debtor filed for relief under Chapter 11 on May 8, 2003. On August 25, 2003, I entered an order approving the stipulation between the Debtor and BankNorth, NA regarding the Debtor's use of cash collateral and the Debtor's request to enter into a charter agreement with Mizelle Fishing Enterprise Corp. ("Mizelle") for one of the Debtor's sole assets, a 63-foot passenger boat (the "Navigator"). The Court thereafter approved agreed-upon amended versions of the stipulation over the ensuing six months.

In March of 2004, the United States Trustee moved to convert the case to one under Chapter 7 on the grounds that the Debtor was not engaged in business and was not paying the required fees to the United States Trustee. After a hearing, I entered an order continuing the motion to the hearing on the disclosure statement which statement was to be filed by July 30, 2004. In August of 2004, the United States Trustee moved to dismiss on the grounds that the Debtor had failed to file the disclosure statement as ordered. On September 7, 2004, I entered an order granting the conversion.

The Chapter 7 trustee (the "Trustee") was appointed on September 8, 2004. I granted the motion to hire his firm ("Murtha") on October 19, 2004. On October 25, he moved to hire a yacht broker and I allowed the same on November 3, 2004. In January, he hired his accountant (the "Accountant") and requested that he be permitted to enter into a dock rental agreement. The agreement was with Mizelle and, according to the Trustee, was designed to keep the Navigator where it was then docked pending a sale of the vessel especially because the boat was not insured. Two days after he sought approval of the dock rental agreement, the Trustee moved to sell the Navigator. The sole shareholder objected to the dock rental agreement on the grounds that Mizelle had violated the prior charter agreement and because the Trustee would be wiser to obtain insurance on the boat and move the vessel.

On March 9, 2005, I entered an order authorizing the sale of the Navigator and permitting the Trustee to enter into the dock rental agreement while specifying that the order did not affect any parties' rights under the charter agreement. In April, the Trustee began the claims objection process. The claims were resolved by the end of the summer. By the beginning of 2006, the Trustee had abandoned the two lawsuits in which the estate had an interest.

In April of 2006, the Trustee filed the Final Report along with the fee applications for the Trustee, Murtha, the Debtor's Chapter 11 counsel and the Accountant. The Debtor's sole shareholder (the "Shareholder") filed objections to all but the fee application of the Trustee. With respect to the fee application of the Debtor's Chapter 11 counsel, the Shareholder represented that the fees had been waived. With respect to the fees for the Accountant, the Shareholder claimed that the fee request was unsupported.

With respect to Murtha, the Shareholder argued that Murtha did not move in an expeditious fashion to determine the value of BankNorth's claim. If it had, the Navigator could have been sold or refinanced at the time of conversion and the estate would not have incurred significant legal fees. The Shareholder also complained that the Trustee expended too much time seeking a broker. The Shareholder explained that Murtha should have allowed the Shareholder to obtain insurance on the Navigator and should not have pursued an agreement with Mizelle due to its breach of the charter agreement. Murtha, the Shareholder argued, charged too much for the telephone calls the Shareholder made to confer with the Trustee. Overall, the Shareholder submitted, Murtha performed work that was more properly the responsibility of the Trustee.

The Trustee filed a response to the objection. In it, he represented that the issue regarding the Debtor's Chapter 11 counsel was resolved. The Trustee also explained that the Shareholder did not appear to be pressing his objection to the Accountant's application. The Trustee pointed out that unsecured creditors are receiving a 100% dividend due in part because the Trustee is reducing the commission to which he is entitled by \$4,000 and Murtha is reducing its application by approximately \$1,600.

With respect to the specific objections, the Trustee first represented that he only paid the

BankNorth claim after he had determined that the Debtor's Shareholder had no further objection. With respect to the boat broker, the Trustee explained that he hired a broker quickly and that the fees incurred were a result of working on the listing agreement and drafting the motion to employ. With respect to the insurance, the Trustee argued that little time was spent on the matter and it was necessary due to the interest of the boat broker and BankNorth. The Trustee also explained that he had reviewed the application and was comfortable that the services were properly segregated.

The Shareholder then replied to the forgoing response. In it, he contends that if the Navigator sold to the purchaser who existed at the time of conversions for the price of \$200,000, all the creditors would have been paid and there would have been \$60,000 left over for the estate. As for the insurance, the Shareholder contends that insurance was always available and the Trustee should not have spent money searching for the same. Lastly, the Shareholder contends that Murtha has not established that it should be reimbursed for tasks that were the responsibility of the Trustee. The Shareholder also objected to the fees the Accountant was charging for preparing W-2's and tax returns for 2004 when there were no employees in 2004 and the Shareholder believes that H&R Block prepared the tax return.

### III. Analysis

The Trustee submitted a motion to sell the Navigator approximately two months after he hired a broker. While it may have been the case that fewer administrative fees would have been incurred had the Navigator been sold at the outset of the converted case, the Trustee was required to fulfill procedural and fiduciary duties by hiring a broker, finding an independent buyer and participating in a Bankruptcy Code required sale procedure. The sale of the Navigator resulted in

proceeds that insured that the creditors of the estate were paid 100%, a noteworthy result. Likewise, the Trustee has an independent obligation to obtain insurance and cannot simply accept a proffer of the same from the Debtor's counsel at a meeting of creditors. He is obligated to make an independent inquiry. While the Court appreciates that the Shareholder's counsel would have managed the case differently, the Court notes that the docket reflects that the Debtor was given an opportunity to reorganize, lost the opportunity and, after the case was turned over to the Trustee, the Trustee obtained an excellent result.

The Court has reviewed the entries in Murtha's application and is confident that the work that Murtha performed was, in fact, legal work. As a percentage, the charges for conferences with the Trustee were small. Even if some of the entries reflect that Murtha performed some of the work which was more properly the responsibility of the Trustee, the reductions which both the Trustee and Murtha have described in their applications serve to address any concern that the Court may have in that regard.

The fee application which Murtha submitted reflects that the Trustee and Murtha capably performed their duties and obtained an admirable result. This is reflected also in the fact that the United States Trustee reviewed the Final Report and had no objection and no creditor interposed an objection. The Shareholder's objection, on the whole, reflects an objection to the manner in which the Trustee liquidated the estate. Given the results of the case, the objection is not well founded.

With respect to the fee request of the Accountant,<sup>1</sup> the Shareholder objects to the

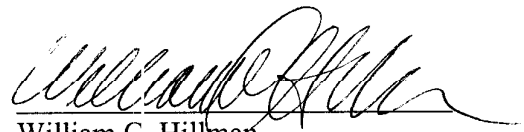
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<sup>1</sup>The Court understands that there is no longer a dispute as to the fee request of the Chapter 11 counsel.

reasonableness of the Accountant's fees. At the hearing, the Shareholder did not press his objection. It was only in the response to the Trustee's opposition to the Trustee's fees that the Shareholder raises the issues of the work which the Accountant performed for 2004. Accordingly, the Accountant did not have an opportunity to respond to this specific objection. Moreover, the Trustee's motion to the employ the Accountant specified that the Account would be working on tax returns. No objection to this motion was filed. The Accountant filed returns for 2004 and 2005, time periods during which this case was pending. The Shareholder did not submit as an exhibit a return which H&R Block prepared and there was no motion to hire H&R Block while the case was being administered as a Chapter 11. Accordingly, the Court overrules the objection to the fee request of the Accountant.

IV. Conclusion

For the reasons stated above, the Court will enter an order overruling the Shareholder's objection.

  
William C. Hillman  
U.S. Bankruptcy Judge

Dated:

7/10/06